

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

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In re: :  
 :  
THE FINANCIAL OVERSIGHT AND : PROMESA  
MANAGEMENT BOARD FOR PUERTO RICO, : Title III  
 :  
as representative of : Case No. 17-BK-3283 (LTS)  
 :  
THE COMMONWEALTH OF PUERTO RICO *et al.*, : (Jointly Administered)  
 :  
Debtors.<sup>1</sup> :  
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In re: :  
 :  
THE FINANCIAL OVERSIGHT AND : PROMESA  
MANAGEMENT BOARD FOR PUERTO RICO, : Title III  
 :  
as representative of : Case No. 17-BK-3566 (LTS)  
 :  
THE EMPLOYEES RETIREMENT SYSTEM OF THE :  
GOVERNMENT OF THE COMMONWEALTH OF :  
PUERTO RICO, :  
 :  
Debtor. :  
----- X

**URGENT JOINT MOTION TO MODIFY DISCOVERY AND BRIEFING  
SCHEDULE WITH RESPECT TO CERTAIN ISSUES RAISED IN CERTAIN  
CONTESTED MATTERS AND ADVERSARY PROCEEDINGS RELATED TO THE  
BONDS ISSUED BY THE EMPLOYEES RETIREMENT SYSTEM OF THE  
GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO**

<sup>1</sup> The Debtors in these Title III cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

To the Honorable United States District Court Judge Laura Taylor Swain:

The Official Committee of Unsecured Creditors (the “Creditors’ Committee”),<sup>1</sup> the Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the “Retiree Committee” and, together with the Creditors’ Committee, the “Committees”), the Financial Oversight and Management Board for Puerto Rico (the “FOMB”), the Special Claims Committee of the Financial Oversight and Management Board for Puerto Rico (the “SCC”), the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF” and, together with the FOMB and the SCC, the “Government Parties”), certain groups of ERS bondholders represented by Jones Day and White & Case LLP (the “ERS Bondholder Groups”), and The Bank of New York Mellon, as Fiscal Agent for the ERS bonds (the “Fiscal Agent” and, together with the ERS Bondholder Groups, the Committees, and the Government Parties, the “Parties”) hereby file this *Urgent Joint Motion to Modify Discovery and Briefing Schedule with Respect to Certain Issues Raised in Certain Contested Matters and Adversary Proceedings Related to the Bonds Issued by the Employees Retirement System of the Government of the Commonwealth of Puerto Rico* (the “Motion”). In support of this Motion, the Parties respectfully state as follows:

### **BACKGROUND**

1. On July 24, 2019, the Court entered the *Order Regarding Stay Period and Mandatory Mediation* [Docket No. 8244] (the “Stay Order”) staying certain adversary proceedings and contested matters and ordering mandatory mediation.

2. Since that date, the Parties have participated in discussions facilitated by the Mediation Team regarding the scheduling of certain ERS matters.

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<sup>1</sup> The Committee is the official committee of unsecured creditors for all Title III Debtors, other than PBA and COFINA.

3. On October 7, 2019, the Court entered its order [Docket No. 8818] approving initial objection procedures (the “Initial Objection Procedures”)<sup>2</sup> with respect to the following matters (collectively, the “Claim Objections”):

- (a) the objections filed by (i) the Creditors’ Committee, each dated March 12, 2019 [Docket Nos. 5580 and 5586] (the “Creditors’ Committee’s Objections”) and (ii) the Retiree Committee, dated April 23, 2019 [Docket No. 6482] (the “Retiree Committee’s Objection”) and, together with the Creditors’ Committee’s Objections, the “Committees’ Objections”) to claims filed by certain holders of bonds (“ERS Bonds”) issued by the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”);
- (b) the objection filed by the FOMB, dated May 22, 2019 [Docket No. 7075] (the “FOMB Objection”);
- (c) any Additional Claim Objections; and
- (d) count one of each complaint (the “Count One Allegations”) filed in the adversary proceedings commenced by the SCC and the Creditors’ Committee [Adv. Nos. 19-355, 19-356, 19-357, 19-358, 19-359, 19-360, and 19-361] (the “ERS Clawback Litigation”).

4. On October 24, 2019, the Court entered its order [Docket No. 8962] modifying the Stay Order (the “Stay Abatement Order”) to allow for resolution of the following issues: (i) the *ultra vires* challenge to the enforceability of the ERS Bonds (“Ultra Vires Issue”) raised in the Committees’ Objections and the Count One Allegations of the ERS Clawback Litigation; and (ii) issues regarding the scope of the ERS Bondholders’ liens (the “Lien Scope Issues”) raised in Adversary Proceeding Case Nos. 19-366 and 19-367 (the “ERS Lien Litigation”), Parts III, IV, V, and ¶¶ 94-97 of Part VI of the Retiree Committee’s Objection, and Part I.A.i (i.e., ¶¶ 63-67) of the FOMB Objection.

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<sup>2</sup> Capitalized terms used but not defined in this Motion have the meanings set forth in the Initial Objection Procedures.

5. The Stay Abatement Order set a discovery and briefing schedule to apply to litigation of the Ultra Vires Issue and the Lien Scope Issues (“Litigation Schedule”).

6. The Parties have been proceeding according to Litigation Schedule but agree that additional time is required to complete discovery, and have therefore agreed to a revised litigation schedule for the Ultra Vires Issue and the Lien Scope Issues, as set forth below:

**RELIEF REQUESTED**

7. By this Motion, the Parties jointly request that the Court modify the current Litigation Schedule set forth in the Stay Abatement Order to the “Revised” schedule as shown below:

	<b>Current</b>	<b>Revised</b>
Deadline for the defendants in the ERS Lien Litigation to answer the complaints and file counterclaims	10/25/2019	10/25/2019
Deadline for responses to Ultra Vires Issue raised in the Committees’ Objections	10/25/2019	10/25/2019
Deadline for the ERS Bondholder Groups to answer the complaints and file counterclaims for the Count One Allegations of the ERS Clawback Litigation	10/25/2019	10/25/2019
Deadline for the plaintiffs to answer the counterclaims (if any) filed in the ERS Lien Litigation and the ERS Clawback Litigation	11/1/2019	11/1/2019
Rule 26 Disclosures	11/1/2019	11/1/2019
Fact discovery commences	11/1/2019	11/1/2019
Deadline for serving written discovery	11/1/2019	11/1/2019
Responses to document requests	11/22/2019	11/22/2019
Responses to interrogatories / RFAs	12/3/2019	12/3/2019
Deadline for any motions to compel	1/3/2020	1/3/2020
Disclosure of experts (if any) and a summary of the subjects about which they will offer opinions	2/3/2020	3/20/2020
Deadline for completion of fact discovery	2/3/2020	3/30/2020
Service of expert reports (if any)	2/17/2020	4/1/2020
Disclosure of rebuttal experts and service of rebuttal expert reports (if any)	3/2/2020	4/15/2020
Deadline for completion of expert depositions (if any)	3/16/2020	4/27/2020
Deadline for filing motions for summary judgment and declarations in support	4/6/2020	5/6/2020

Deadline for Participants to file joinders in the motions for summary judgment on the Ultra Vires Issues	4/13/2020	5/13/2020
Deadline for filing oppositions to summary judgment briefs and declarations in support	5/6/2020	6/3/2020
Deadline for Participants to file joinders in oppositions to the summary judgment briefs on the Ultra Vires Issues	5/13/2020	6/10/2020
Deadline for filing reply briefs in support of motion for summary judgment and declarations in support	5/20/2020	6/17/2020

8. The Stay Abatement Order will remain in effect in all other respects.

9. A copy of the order granting this Motion will be (a) served on all defendants in the ERS Lien Litigation and the ERS Clawback Litigation, (b) served on all Participants, and (c) posted on the ERS Objection Website.

10. Pursuant to Paragraph I.H of the Case Management Procedures, the Parties hereby certify that they have carefully examined the matter and concluded that there is a true need for this Urgent Supplement; have not created the urgency through any lack of due diligence; have made a bona fide effort to resolve the matter without a hearing; and have made reasonable, good-faith communications in an effort to resolve or narrow the issues that are being brought to the Court.

### **REQUEST FOR EXPEDITED RELIEF**

11. The Parties request that the Court grant the Motion within the next 7 days without holding a hearing. The Parties believe this expedited timeframe is appropriate given the widespread consensus in support of the Motion, the narrow relief requested herein, and the impending deadlines in the current Litigation Schedule.

### **NOTICE**

12. Notice of this Motion has been provided to the following entities, or their counsel, if known: (i) the U.S. Trustee; (ii) the Office of the United States Attorney for the District of Puerto

Rico; (iii) the Financial Oversight and Management Board for Puerto Rico, (iv) the Puerto Rico Fiscal Agency and Financial Advisory Authority; (v) the Official Committee of Retired Employees of the Commonwealth of Puerto Rico; (vi) the insurers of the bonds issued or guaranteed by the Debtors; (vii) counsel to certain ad hoc groups of holders of bonds issued or guaranteed by the Debtors; (viii) holders of ERS bonds who are parties to any group that has filed a statement under Bankruptcy Rule 2019; (x) The Bank of New York Mellon, as Fiscal Agent for the ERS Bonds; (xii) all parties that have filed a notice of appearance in the above-captioned Title III cases; (xiii) all defendants in the ERS Clawback Litigation and the ERS Lien Litigation; and (xiv) all Participants.

**NO PRIOR REQUEST**

13. No previous request for the relief requested herein has been made to this or any other court.

*[Remainder of page intentionally left blank.]*

WHEREFORE, the Parties respectfully requests that the Court enter the proposed order, substantially in the form attached hereto as **Exhibit A**, and grant the Parties such other relief as is just and proper.

Dated: February 3, 2020

By: /s/ Luc. A. Despins

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Investors Tax-Free Fund VI, Inc., Puerto Rico  
Mortgage-Backed & U.S. Government Securities Fund,  
Inc., Tax-Free Puerto Rico Fund, Inc., Tax-Free Puerto  
Rico Fund II, Inc., and Tax-Free Puerto Rico Target  
Maturity Fund, Inc.*

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**EXHIBIT A**

**Proposed Order**



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

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In re: :  
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THE FINANCIAL OVERSIGHT AND : PROMESA  
MANAGEMENT BOARD FOR PUERTO RICO, : Title III  
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as representative of : Case No. 17-BK-3283 (LTS)  
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THE COMMONWEALTH OF PUERTO RICO *et al.*, : (Jointly Administered)  
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Debtors.<sup>1</sup> :  
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In re: :  
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THE FINANCIAL OVERSIGHT AND : PROMESA  
MANAGEMENT BOARD FOR PUERTO RICO, : Title III  
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as representative of : Case No. 17-BK-3566 (LTS)  
:  
THE EMPLOYEES RETIREMENT SYSTEM OF THE :  
GOVERNMENT OF THE COMMONWEALTH OF :  
PUERTO RICO, :  
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Debtor. :  
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<sup>1</sup> The Debtors in these Title III cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

**ORDER ON URGENT JOINT MOTION TO MODIFY DISCOVERY AND BRIEFING  
SCHEDULE WITH RESPECT TO CERTAIN ISSUES RAISED IN CERTAIN  
CONTESTED MATTERS AND ADVERSARY PROCEEDINGS RELATED TO THE  
BONDS ISSUED BY THE EMPLOYEES RETIREMENT SYSTEM OF THE  
GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO**

Upon consideration of the *Urgent Joint Motion to Modify Discovery and Briefing Schedule With Respect to Certain Contested Matters and Adversary Proceedings Related to the Bonds Issued by the Employees Retirement System of the Government of the Commonwealth of Puerto Rico* (the “Motion”)<sup>1</sup>; the Court having found and determined that (i) the Court has jurisdiction to consider the Motion and the relief requested therein; (ii) venue is proper before this Court pursuant to PROMESA section 307(a); (iii) due and proper notice of this Motion has been provided under the particular circumstances and no other or further notice need be provided; (iv) based on the statements and arguments made in the Motion, the relief requested in the Motion is in the best interest of ERS, the Commonwealth and their creditors; (v) any objections to the relief requested in the Motion have been withdrawn or are hereby overruled; and (vi) the legal and factual bases set forth in the Motion establish just cause for the relief granted herein. Accordingly, it is hereby ORDERED THAT:

1. The Motion is granted.
2. The discovery and briefing schedule set forth in the *Order Granting Urgent Joint Motion to Modify Order Regarding Stay and Mandatory Mediation with Respect to Certain Issues Raised in Certain Contested Matters and Adversary Proceedings Related to the Bonds Issued by the Employees Retirement system of the Government of the Commonwealth of Puerto Rico* [Docket

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<sup>1</sup> Capitalized terms not herein defines shall have the meanings ascribed to them in the Motion.

No. 8962] (the “Stay Abatement Order”) is hereby revised, and the following discovery and briefing schedule shall apply to litigation of the Ultra Vires Issues and the Lien Scope Issues:

Deadline for the Defendants in the ERS Lien Litigation to answer the complaints and file counterclaims	10/25/2019
Deadline for responses to Ultra Vires Issue raised in the Committees’ Objections	10/25/2019
Deadline for the ERS Bondholder Groups to answer the complaints and file counterclaims for the Count One Allegations of the ERS Clawback Litigation	10/25/2019
Deadline for the plaintiffs to answer the counterclaims (if any) filed in the ERS Lien Litigation and the ERS Clawback Litigation	11/1/2019
Rule 26 Disclosures	11/1/2019
Fact discovery commences	11/1/2019
Deadline for serving written discovery	11/1/2019
Responses to document requests	11/22/2019
Responses to interrogatories / RFAs	12/3/2019
Deadline for any motions to compel	1/3/2020
Disclosure of experts (if any) and a summary of the subjects about which they will offer opinions	3/20/2020
Deadline for completion of fact discovery	3/30/2020
Service of expert reports (if any)	4/1/2020
Disclosure of rebuttal experts and service of rebuttal expert reports (if any)	4/15/2020
Deadline for completion of expert depositions (if any)	4/27/2020
Deadline for filing motions for summary judgment and declarations in support	5/6/2020
Deadline for Participants to file joinders in the motions for summary judgment on the Ultra Vires Issues	5/13/2020
Deadline for filing oppositions to summary judgment briefs and declarations in support	6/3/2020
Deadline for Participants to file joinders in oppositions to the motions summary judgment briefs on the Ultra Vires Issues	6/10/2020
Deadline for filing reply briefs in support of motion for summary judgment and declarations in support	6/17/2020

3. The Stay Abatement Order remains in effect in all other respects.

4. A copy of this Order shall be filed on the docket in Commonwealth’s and ERS’s Title III cases, the ERS Lien Litigation, and the ERS Clawback Litigation. A copy of this Order

shall also be served by the plaintiffs upon all defendants in the ERS Lien Litigation and the ERS Clawback Litigation, as well as served upon all Participants. A copy of this Order shall also be posted on the ERS Objection Website.

5. The terms of and conditions of this Order shall be immediately effective and enforceable upon its entry.

6. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: February \_\_, 2020

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HON. LAURA TAYLOR SWAIN  
UNITED STATES DISTRICT JUDGE